EVIDENCE—WITNESSES—PRIVILEGED COMMUNICATION—JUVENILE COURT JUDGE.—A twelve year old boy, being assured that his statements could not be used against him or his mother, who was charged with the murder of his father, confessed his part in the murder to Judge Ben Lindsey, the juvenile court judge of the district. Thereupon delinquency proceedings were instituted against the boy, and he was taken in charge as a delinquent child. At the trial of the mother, the boy testified in her favor. The prosecution called Judge Lindsey to impeach this testimony, the boy having consented to the judge testifying. The judge refused to testify and claimed the communication was privileged, whereupon the court imposed a fine for contempt. *Held,* (three judges *dissenting*) that the fine was correctly imposed, because the communication was not privileged. *Lindsey v. People* (1919, Colo.) 181 Pac. 531.

The privilege between attorney and client and that between husband and wife are well established. 4 Wigmore, *Evidence* (1905) secs. 2291, 2336; 5 Chamberlayne, *Evidence* (1911) secs. 3677, 3697. The privilege of an informer and a public official has also been recognized. *Worthington v. Scribner* (1872) 109 Mass. 487 (solicitor of United States treasury). That between physician and patient has been created in some states by statute. 5 Chamberlayne, *op. cit.*, sec. 3701. Wigmore divides the test for privilege into four elements, all of which were admittedly present in the instant case, except that "(4) the injury that would inure to the relation by the disclosure must be greater than the benefit thereby gained for the correct disposal of the litigation." 4 Wigmore, *op. cit.*, sec. 2285. The majority of the court held this element to be lacking and did not feel that it could recognize the privilege in the absence of statutory authority. The dissenting opinion by Bailey, J. presents forceful arguments to the contrary. And it is difficult to see how the work of a juvenile court judge can be of enough value to justify his existence, unless he is protected in keeping the children's confidence. In the instant case, to be sure, the boy had waived the privilege. The general rule is that the privilege can be thus waived by the person for whose benefit it was created and by him only. *McCooe v. Dighton, S. & S. Ry.* (1899) 173 Mass. 117, 53 N. E. 133; *Dowie's Estate* (1890) 135 Pa. 210, 19 Atl. 936. But it is submitted that, if the privilege were recognized in the principal case, the power of waiver might properly have been held to be in the judge of the juvenile court, since the child was a ward of the court.

EXECUTORS AND ADMINISTRATORS—ANCILLARY ADMINISTRATION NOT CHARGEABLE WITH EXPENSES OF DOMICILIARY EXECUTOR.—A testator died leaving property of small value in Oklahoma, the state of his domicile, and a bank deposit of much greater value in Texas. After litigation, in which the plaintiff, an attorney, was employed by the executor, the will was admitted to probate in Oklahoma. Meantime the defendant had been appointed administrator, without the will, in Texas. The plaintiff sought to recover the value of his services from the administrator, the Oklahoma estate being insufficient in amount and the executor insolvent. *Held,* that judgment for the plaintiff was erroneous, since the ancillary estate in Texas was not chargeable with any part of the expense of administrating the domiciliary estate in Oklahoma. *Hare v. Pendleton* (1919, Tex. Civ. App.) 214 S. W. 948.

In many states attorney's fees for services beneficial to the estate are the personal obligation of the executor or administrator who employs the attorney. *Estate of Kruger* (1904) 143 Calif. 141, 76 Pac. 891; *cf.* (1919) 29 YALE LAW JOURNAL, 242. But in Texas, by reason of statute, such fees have been held to be a direct claim against the estate. *Gammage v. Rather* (1876) 46 Tex. 105. The court assumed the Oklahoma law to be the same and that the plaintiff had a direct claim against the Oklahoma estate. But was such a claim a charge upon the estate being administered in Texas? The plaintiff contended that the

executor would have a right to reimbursement out of the Texas assets for proper expenses of the Oklahoma administration and that he, the plaintiff, should be subrogated to such right. The court, however, denied that the executor, if he had paid the plaintiff, would have the right asserted. His claim for reimbursement out of assets of the estate was limited, the court said, to the property within his trusteeship, and until he obtained actual possession of the property in Texas, it was not within his trusteeship, nor was he bound to account for it. *Sherman v. Page* (1881) 85 N. Y. 123. The two administrations were separate and distinct; while usually the ancillary representative remits the surplus assets to the domiciliary representative for distribution, this is only by reason of comity; distribution directly to legatees or next of kin may be ordered by the court of the ancillary jurisdiction. *Harvey v. Richards* (1818, C. C. D. Mass.) 1 Mason, 381, 415; *Matter of Hughes* (1884) 95 N. Y. 55. The executor's right to reimbursement for proper expenses grows out of the trust relation which he holds in respect to property in his hands as trustee. He holds no such relation in respect to the Texas property. Neither would the Oklahoma executor occupy the position of a creditor of the estate being administered in Texas. The well-reasoned opinion seems clearly correct. There is a *dictum* that possibly the legatee who has been benefited by the establishment of the will might be held personally in a quasi-contractual action. *Cf. Williams v. Gibbes* (1857, U. S.) 20 How. 535. But even if the plaintiff were a creditor of the *sole* legatee, this fact would not give him a standing to demand payment from the defendant administrator. *Cf. Vinson v. Cook* (1919, Okla.) 184 Pac. 97.

LANDLORD AND TENANT—IMPROVEMENTS BY TENANT—COMPENSATION.—The plaintiff and his wife were in possession of land of his father-in-law, paying $100. yearly. There was an understanding that they were eventually to have it, but there was no contract to convey. The plaintiff, with the reluctant consent of the father-in-law on account of their expensive character, made improvements that increased the rental value $100. The wife, after a quarrel, went back to her father, who tried to regain the land. The husband, having been denied specific performance of an alleged contract to convey, sought compensation from the father-in-law for the improvements. *Held,* that the plaintiff should recover. Fraser, J. *dissenting. Coggins v. McKinney* (1919, S. C.) 99 S. E. 844.

The court based the recovery of the plaintiff, as tenant, on the ground that the improvements were made in good faith and with the knowledge and consent of the landlord, who would thereafter enjoy, in the increased rental value, the fruits of the tenant's expenditure. The well settled common-law rule, in the case of such erections by mistake by a stranger or intentionally by a tenant, was that they became, piece by piece, part of the land, and that the landlord or the owner was not liable for their cost in the absence of a contract, although the value of the land was increased. *Kutter v. Smith* (1864) 69 U. S. 491; see 2 Kent, *Commentaries* (13th ed. 1884) 335. But some courts of equity, looking more to the justice of the situation, gave a stranger, who supposed he had a good title, a right to the fair value of improvements made by him. *Bright v. Boyd* (1843, C. C. D. Me.) 2 Story, 605. But see Thurston, *Cases on Quasi Contracts* (1916) 444, note. This view has been adopted in many states by statute, as in South Carolina, the state of the instant case. S. C. Civ. Code, 1912, sec. 3526; see Woodward, *Law of Quasi Contracts* (1913) 301, 302, note. That statute provides only for the person who supposes that the title purchased is good, or that the lease conveys the title and interest therein expressed. In the instant case the plaintiff was unable to prove a contract to convey, and chose to deny even a verbal lease by calling his yearly payments "interest." So the